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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN L. EDMONDS, INDIVIDUALLY AND AS
A MANAGING CENTRAL PARTNER OF FIFTH AND 106TH
STREET HOUSING COMPANY, INC., LOGAN PLAZA
ASSOCIATES, LP, CHARLES H. ASSOCIATES a/k/a
CHARLES H. HILL ASSOCIATES, LP AND AS A
LIMITED PARTNER OF CHURCH HOME ASSOCIATES, LP

Plaintiffs,

-against-

ROBERT W. SEAVEY, INDIVIDUALLY AND AS A
GENERAL PARTNER OF FIFTH AND 106TH STREET
ASSOCIATES, LP, LOGAN PLAZA ASSOCIATES, LP,
CHARLES HILL ASSOCIATES, CHARLES HILL
ASSOCIATES, LP AND AS A LIMITED PARTNER OF
CHURCH HOME ASSOCIATES, L.P., PHYLLIS M.
SEAVEY, INDIVIDUALLY AND AS OWNER, MANAGER
AND MEMBER OF DALTON MANAGEMENT COMPANY,
LLC., AVERY B. SEAVEY, INDIVIDUALLY AND AS
A GENERAL PARTNER OF LOGAN PLAZA ASSOCIATES,
LP, CHURCH HOME ASSOCIATES AND OWNER OF
DALTON MANAGEMENT COMPANY, LLC., NEALE B.
SEAVEY, INDIVIDUALLY AND AS OWNER, MANAGER
AND MEMBER OF DALTON MANAGEMENT COMPANY,
LLC., AND RONALD DAWLEY AS CHIEF EXECUTIVE
OFFICER OF DALTON MANAGEMENT COMPANY, LLC.,
DALTON MANAGEMENT COMPANY, LLC, THE
SEAVEY ORGANIZATION, and MARKS PANETH
& SHRON, Auditors,

Defendants.

(Caption continued on next page.)

500 Pearl Street
New York, New York
RONALD DAWLEY
February 24, 2009
10:45 a.m.

LEX 71923

2 A p p e a r a n c e s :

3
4 M. DOUGLAS HAYWOODE, ESQ.
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BY: M. DOUGLAS HAYWOODE, ESQ.

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10 HERRICK FEINSTEIN, LLP
Attorneys for All Above Defendants
except Marks, Paneth & Shron
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BY: M. DARREN TRAUB, ESQ.

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15 WILSON ELSEER MOSKOWITZ EDELMAN &
DICKER, LLP
Attorneys for Defendant
MARKS, PANETH & SHRON, LLP
3 Gannett Drive, 4th Floor
White Plains, New York 10604
BY: WILLIAM J. KELLY, ESQ.

21 ALSO PRESENT:

22 ORLY CAMERON
23 SANDRA GRIFFITHS
24 ADAM PRYCE
25 JOHN EDMONDS

2 DEPOSITION of RONALD DAWLEY, a Defendant

3 In the above-entitled action, held at the above
4 time and place, pursuant to Order, taken before
5 Angela Torregrossa, a shorthand reporter and
6 Notary Public within and for the State of
7 New York.

2 S T I P U L A T I O N S

3
4 IT IS HEREBY STIPULATED AND AGREED
5 by and between the attorneys for the
6 respective parties herein, that filing,
7 sealing and certification be and the
8 same are hereby waived.

9
10 IT IS FURTHER STIPULATED AND
11 AGREED that all objections, except as
12 to the form of the question shall be
13 reserved to the time of the trial.

14
15 IT IS FURTHER STIPULATED AND
16 AGREED that the within deposition may
17 be signed and sworn to before any
18 officer authorized to administer an
19 oath, with the same force and effect as
20 if signed and sworn to before The
21 Court.

<p>1</p> <p style="text-align: right;">5</p> <p>2 R O N A L D D A W L E Y, the witness herein,</p> <p>3 having been first duly sworn by a</p> <p>4 Notary Public of the State of New York,</p> <p>5 was examined and testified as follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. HAYWOODE:</p> <p>8 Q State your name for the record,</p> <p>9 please.</p> <p>10 A Ronald Dawley.</p> <p>11 Q State your address for the record,</p> <p>12 please.</p> <p>13 A 401 Second Avenue, New York, New</p> <p>14 York, 10010.</p> <p>15 Q Mr. Dawley, I am going to put</p> <p>16 questions to you concerning the affairs of</p> <p>17 these investments that are being manned by</p> <p>18 your counsel. Mr. Kelly, who I presume you</p> <p>19 met before, may have an objection. If they</p> <p>20 do, I guess you'll listen to what they say,</p> <p>21 but I think for the most part under the rules</p> <p>22 of procedure if you understand the question</p> <p>23 you will respond to it. The lawyers will deal</p> <p>24 with whatever cleaning up has to be done</p> <p>25 later. If I say something that you don't.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley</p> <p style="text-align: right;">7</p> <p>2 Q Do you occupy the entire 28th</p> <p>3 floor there?</p> <p>4 A No, just one section of it.</p> <p>5 Q Do you occupy together with some</p> <p>6 other entity or organization?</p> <p>7 A No.</p> <p>8 We have one small area, about</p> <p>9 twelve or thirteen hundred square feet that's</p> <p>10 leased by Dalton Management.</p> <p>11 Q Who do you lease it from?</p> <p>12 A Cohen Brothers.</p> <p>13 Q I am sorry?</p> <p>14 A C-O-H-E-N Brothers.</p> <p>15 Q The area that you occupy, does it</p> <p>16 have a separate room number or something?</p> <p>17 A They don't give you room numbers.</p> <p>18 We use 2800. We use Suite 2800, but they</p> <p>19 don't officially assign you your room.</p> <p>20 Q Are you in the same facility with</p> <p>21 the Seavey Group or the Seavey Organization?</p> <p>22 A They are next door.</p> <p>23 Q When you say next door, they are</p> <p>24 in another area of this floor?</p> <p>25 A They are in another area, yes.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley</p> <p style="text-align: right;">6</p> <p>2 understand say so. If you need time to</p> <p>3 reflect on something take it and hopefully we</p> <p>4 will get through everything that we have an</p> <p>5 interest in.</p> <p>6 Is that okay with you?</p> <p>7 A Okay.</p> <p>8 Q Mr. Dawley, you work with Dalton</p> <p>9 Management presently?</p> <p>10 A Yes.</p> <p>11 Q What is your position, sir, with</p> <p>12 Dalton?</p> <p>13 A I'm the chief operating officer.</p> <p>14 Q When were you first employed by</p> <p>15 Dalton?</p> <p>16 A November of 1999.</p> <p>17 Q In what capacity were you hired in</p> <p>18 November of 1999?</p> <p>19 A As a chief operating officer.</p> <p>20 Q What is the office location of</p> <p>21 Dalton Management?</p> <p>22 A 34 Park Avenue.</p> <p>23 Q Is there any particular room</p> <p>24 there?</p> <p>25 A It's the 28th floor.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley</p> <p style="text-align: right;">8</p> <p>2 Q Do you have a common reception</p> <p>3 room?</p> <p>4 A No.</p> <p>5 Q So the entrance to Dalton is not</p> <p>6 the entrance to the Seavey Group?</p> <p>7 A No.</p> <p>8 Q There is a wall between the</p> <p>9 operations?</p> <p>10 A With a door.</p> <p>11 Q So that access to the one</p> <p>12 operation is not physical access to Dalton</p> <p>13 Management?</p> <p>14 A You need to rephrase that. I</p> <p>15 don't know what you mean.</p> <p>16 Q In other words, if once I enter</p> <p>17 the Seavey Group, there is no way that I could</p> <p>18 from there walk over into Dalton Management,</p> <p>19 is there?</p> <p>20 A There is a door that connects the</p> <p>21 two suites.</p> <p>22 Q Is that door closed or is it kept</p> <p>23 opened or what?</p> <p>24 A Sometimes.</p> <p>25 Q Sometimes which?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

1 Dawley 9

2 **A Sometimes opened and sometimes**
 3 **closed.**

4 **Q** So then it is possible that if
 someone came into the Seavey Group, they could
 walk into the group and they could be at
 7 Dalton, is that correct?

8 **A They could.**

9 **Q** Now, how many persons work at that
 10 location for Dalton?

11 **A They have six including myself.**

12 **Q** Yourself and five others?

13 **A Yes.**

14 **Q** What are the names of the other
 15 five?

16 **A Michael Hill, Joan Mondesir.**

17 **Q** What is his position?

18 **A He's the manager for two**
 19 **properties.**

20 **Q** Which two properties is that?

21 **A Haywoode Towers and Galileo.**

22 **Q** Haywoode and Galileo?

23 **A Associates.**

24 **Q** What is the location of Haywoode
 25 Towers approximately?

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1 Dawley 10

2 **A 175 West 90th.**

3 **Q** Galileo Associates has a property
 4 where?

5 **A 303 West 21st.**

6 **Q** Now, you mentioned Joan Mondesir.

7 **A Yes.**

8 **Q** What is her title?

9 **A She is basically our compliance**
 10 **officer.**

11 **Q** Who else is at that location?

12 **A Lynn Shapiro**

13 **Q** What is her title, sir?

14 **A She is, I guess you would say,**
 15 **assistant controller.**

16 **Q** The fourth and fifth persons are?

17 **A Alonzo Rodgers and Veronica**
 18 **Mackenzie.**

19 **Q** What's Mr. Rodger's title?

20 **A He's our legal liaison.**

21 **Q** In that description, what are the
 22 duties of Mr. Rodgers as to legal liaison?

23 **A He coordinates the landlord/tenant**
 24 **cases with the attorneys and the managers.**

25 **Q** He have event any other duties?

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1 Dawley 11

2 **A He downloads the rent revenues**
 3 **that come in and deposits them into the bank.**

4 **Q** Ms. Mackenzie?

5 **A She is the accounts payable clerk.**

6 **Q** Sir, if you recall or if you can
 7 tell us approximately what is your yearly
 8 salary at Dalton Management?

9 **MR. TRAUB: Objection.**

10 **Irrelevant.**

11 **You're welcome to answer.**

12 **A \$140,000.00 a year.**

13 **Q** Roughly what is the salary of
 14 Michael Hill?

15 **A Approximately 60.**

16 **MR. TRAUB: I am going to do**
 17 **the same objection for each of**
 18 **these questions, but I am not**
 19 **going to instruct him not to**
 20 **answer, but I just want my**
 21 **objection on the record.**

22 **MR. HAYWOODE: I know that.**

23 **Q** And Joan Mondesir?

24 **A Approximately 80.**

25 **Q** Lynn Shapiro?

LEX REPORTING SERVICE
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1 Dawley 12

2 **A Approximately 60.**

3 **Q** Mr. Rodgers, Alonzo Rodgers?

4 **A Approximately 45.**

5 **Q** Ms. Mackenzie?

6 **A Approximately 40.**

7 **Q** Sir, how many investments or sites
 8 or buildings does Dalton manage from this
 9 location?

10 **MR. TRAUB: Same objection.**

11 **A Ten.**

12 **Q** What are the names of those sites?

13 **A Church Home Associates, Logan**
 14 **Associates, Charles Hill Associates, Haywoode**
 15 **Associates, Cooper Gramercy Associates,**
 16 **University Riverview Associates. Bethune**
 17 **Tower Associates, Galileo Associates, Fifth**
 18 **and 106th Street Associates and YA Associates.**

19 **Q** Does Dalton manage any other
 20 investments from any other site?

21 **MR. TRAUB: Objection to the**
 22 **form.**

23 **A Say again?**

24 **Q** Does Dalton manage any other
 25 investments from any other site?

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1	Dawley	13	1	Dawley	15
2	MR. TRAUB: You mean does		2	redirect, but in the middle of	
3	Dalton have another office that		3	his examination under the new	
4	they manage out of?		4	rules this is not appropriate.	
5	Q I will withdraw the question.		5	MR. TRAUB: I was just	
6	Does Dalton manage any other		6	clarifying the question and	
7	investments?		7	answer, because he didn't let me	
8	A No.		8	get my objection out and your	
9	Q That's the totality of what Dalton		9	question was a little vague and	
10	does?		10	ambiguous. I was trying to	
11	A Yes.		11	clarify and get my objection out.	
12	Q With regard to these investments,		12	He answered. I will put my	
13	you know Mr. Edmonds, John Edmonds, is that		13	objection on the record.	
14	correct?		14	Objection. Your question is	
15	A Yes.		15	vague and ambiguous.	
16	Q It is a fact that he's associated		16	You need to slow down and	
17	in the ownership of Church Homes, Logan,		17	let me get my objection out.	
18	Charles Hill and Fifth and 106th Street, is		18	THE WITNESS: Okay.	
19	that correct?		19	Q Do you have any training or	
20	A That's what I've been told.		20	qualification in any area, CPA or accounting,	
21	Q With regard to Robert Seavey,		21	or anything of that nature, sir?	
22	Phyllis Seavey, Avery Seavey and Neale Seavey,		22	A Yes.	
23	the Seavey Group they also participate, to		23	Q What if anything is that	
24	your knowledge, in the ownership of those		24	qualification?	
25	investments, is that correct?		25	A I graduated with a major in	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	
1	Dawley	14	1	Dawley	16
2	MR. TRAUB: Objection.		2	accounting.	
3	Are you asking the Seavey		3	Q From where, sir?	
4	Group? Are you categorizing the		4	A University of Washington.	
5	Seavey Group as the four Seavey's		5	Q Is that in the State of	
6	or are you saying that's a fifth		6	Washington?	
7	name, if you will, in your list?		7	A Yes.	
8	Q No.		8	Q What degree, sir, did you receive	
9	I am asking if the Seavey's are		9	there?	
10	interested in the buildings that John Edmonds		10	A Bachelors Degree.	
11	are interested in to your knowledge?		11	Q Did you do any additional study or	
12	A As far as I know, they have some		12	work, or obtain any additional qualification,	
13	relationship.		13	other than the Bachelors of Art Degree?	
14	Q With regard to each of the other		14	A No.	
15	investments the John Edmonds isn't interested		15	Q Before working at Dalton	
16	in, is it fair to say that the Seavey's, some		16	Management, did you work in the accounting	
17	of the Seavey's, have interests in those		17	field at any other company?	
18	investments also?		18	A Yes.	
19	A That's my understanding.		19	Q What company?	
20	MR. TRAUB: In each of them?		20	A Hudson River Management.	
21	THE WITNESS: I don't know		21	Q Where was that?	
22	if each person, what if any		22	A Manhattan.	
23	interest they each own.		23	Q I am sorry?	
24	MR. HAYWOODE: Just so we		24	A Manhattan.	
25	get together here, you can do		25	Q What years did you work with	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	

1 Dawley 17

2 Hudson River Management?

3 **A I think it was five years. Five**

4 **years prior to working for Dalton Management.**

5 **Q** Prior to going to Hudson River

6 Management, sir, for whom did you work?

7 **A I worked for -- I don't remember**

8 **their name. I only worked there a short time,**

9 **but it was for an asbestos removal company on**

10 **Long Island.**

11 **Q** In what year did you receive your

12 Bachelor of Arts, Mr. Dalton?

13 **A 1967.**

14 **Q** Prior to the asbestos company for

15 whom did you work?

16 **A I worked for Florida Flooring.**

17 **Q** Where is that located?

18 **A It's in Brandon Florida.**

19 **Q** How long were you with them?

20 **A About five three years.**

21 **Q** In what capacity did you work for

22 them?

23 **A I was the controller.**

24 **Q** Prior to Florida Flooring?

25 **A It was a housing -- it was a**

LEX REPORTING SERVICE
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Dawley 18

2 **development company in New Bedford. I worked**

3 **there about a year, year and a half.**

4 **Q** That's New Bedford, Connecticut?

5 **A No, Massachusetts.**

6 **Q** What was the next highest salary

7 you received, in any of these developments,

8 prior to coming to Dalton if you recall?

9 **A The prior job I had with Hudson**

10 **River Management I was making I think 105.**

11 **Q** Sir, would you describe to me the

12 duties of Dalton Management, with regard to

13 the investments that John Edmonds and the

14 Seavey's are interested in? What are your

15 duties generally with those duties?

16 **A My duties or the company's.**

17 **Q** The company's?

18 **MR. TRAUB:** You mean the

19 partnerships that Edmonds and the

20 Seavey Groups are in together

21 right now?

22 **MR. HAYWOODE:** Yes.

23 **A You're talking what Dalton**

24 **Management does for those companies?**

25 **Q** Yes.

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1 Dawley 19

2 What does Dalton do?

3 **A Dalton is the managing agent.**

4 **They bill the tenants, they collect the**

5 **revenues, they pay the expenses.**

6 **Q** Is there anything else that Dalton

7 does?

8 **A They apply for rent increases when**

9 **appropriate.**

10 **Q** Does Dalton keep books and records

11 of these corporations?

12 **A Their partnerships, yes.**

13 **Q** Dalton has been responsible for

14 keeping those books and records since you've

15 there?

16 **MR. TRAUB:** Objection to the

17 form.

18 **Q** Dalton has been responsible for

19 keeping the books and records of these

20 corporations since you've been there?

21 **MR. TRAUB:** General

22 objection to form. That's a

23 statement not a question.

24 **MR. HAYWOODE:** Not if you

25 put a question mark at the end.

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Dawley 20

2 Do you understand what I am

3 saying, assuming there is a

4 question mark at the end?

5 **MR. TRAUB:** I am not telling

6 him not to answer, but just

7 objection to form.

8 **Q** Do you understand?

9 **A Yes.**

10 **Dalton started to manage the**

11 **properties in the year 2000. They did not**

12 **start to manage Lakeview until later. I don't**

13 **remember exactly when.**

14 **Q** How many years now have you been

15 managing Lakeview that you recall roughly?

16 **A Roughly eight.**

17 **Q** You began managing all the other

18 properties in 2000?

19 **A Yes.**

20 **Q** In point of fact Dalton had

21 managed Charles Hill prior to 2000, is that

22 not so?

23 **A Not that I am aware of.**

24 **Q** Are you knowledgeable of who your

25 predecessor as chief executive officer was at

LEX REPORTING SERVICE
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1 Dawley 21

2 Dalton before 2000?

3 **A No.**

4 **Q** Does Dalton keep the books and

5 records of these investments?

6 **A I am sorry, which?**

7 **Q** Of the Seavey/Edmonds investments

8 Dalton keeps the books and records?

9 **A Yes.**

10 **Q** You were approached some time in

11 March of 2007 by Cameron, Pryce & Griffiths

12 and told that they were asked to do an audit

13 of those records?

14 MR. TRAUB: Objection to

15 form.

16 **A I don't remember the exact date,**

17 **but that's about right.**

18 **Q** Mr. Cameron contacted you and

19 requested information, did he not, with regard

20 to the audit?

21 MR. TRAUB: Objection to

22 form.

23 **A I spoke to him, but I don't**

24 **remember exactly what we talked about other**

25 **than that they were going to come in and look**

LEX REPORTING SERVICE
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1 Dawley 22

2 **through the books and records for the four**

3 **companies.**

4 **Q** Did there come a time, when Mr.

5 Cameron and his associates came in and

6 requested that?

7 **A Requested what?**

8 **Q** To look at the books and records?

9 **A Yes, they did.**

10 **Q** If you remember, how many times

11 did they come in to meet with you on that?

12 **A I don't know.**

13 **It was over a period of months.**

14 **Q** I am sorry?

15 **A It was over a period of months**

16 **that they came in and left and came back.**

17 **Q** As these requests were made, were

18 you able to provide the information that they

19 were requesting?

20 **A They came in and asked for the**

21 **information. We provided them with everything**

22 **that we had in our office. They were allowed**

23 **to, you know, look at everything; bank**

24 **statements, cancelled checks, billings,**

25 **invoices.**

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1 Dawley 23

2 **My accounts payable person helped**

3 **them find stuff. I helped them find stuff. I**

4 **showed them where all the records were in the**

5 **back. We have a storage area. It's all laid**

6 **out by month and went through it with them and**

7 **showed them where everything was and helped**

8 **them pull it if they couldn't find it.**

9 **Q** Did there come a time, when they

10 indicated there was information basic to their

11 audit that they could not receive from what

12 you had made available?

13 MR. TRAUB: Objection to the

14 form.

15 **A I think they asked for some**

16 **documents. I think one of the items was the**

17 **mortgages, which would have been the original**

18 **closing papers when the property was either --**

19 **was either refinanced. I didn't have access**

20 **to those and so I couldn't provide them.**

21 **Q** Did you tell them where they might

22 inquire to get it?

23 **A I indicated that the outside**

24 **accountant, Marks, Paneth & Shron, would**

25 **possibly have that information, because they**

LEX REPORTING SERVICE
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1 Dawley 24

2 **need it in order to provide the footnotes in**

3 **the financial statements.**

4 **Q** To your knowledge, did they go to

5 Marks, Paneth & Shron to get that information?

6 **A I believe they did contact, Marks,**

7 **Paneth & Shron about getting information.**

8 **Q** I am going to show you a letter to

9 Dalton Management dated May 16, 2007, which is

10 in the Order to Show Cause, which has been

11 filed in this case.

12 MR. TRAUB: Are you marking

13 it as an Exhibit?

14 MR. HAYWOODE: We will mark

15 it. If you will bear with me for

16 a moment, but it is in the

17 pleadings.

18 MR. TRAUB: So I can keep my

19 notes, you said we are going to

20 mark Exhibits and we will make

21 photocopies later. Were you

22 going to start the number

23 sequential from Bill Jennings

24 deposition or did you want to

25 start over?

LEX REPORTING SERVICE
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1 Dawley 25

2 MR. HAYWOODE: Let's start

3 over from this location.

4 Q I am referring to Exhibit B in

5 support of John Edmonds's affidavit on the

6 Order to Show Cause, which is dated I think

7 June 20th of 2008.

8 Here's a communication, which says

9 it's a follow-up request dated May 10th to

10 your response on the 15th and it asks for

11 certain items; distribution basis and sporting

12 documentation for journal entries, retained

13 earnings account and adjusting partner capital

14 account. It's Item One here.

15 Do you recall receiving this

16 communication and seeing that request?

17 A It's familiar, but I don't recall

18 specifically.

19 Q To your present recollection, were

20 you able to comply with that request?

21 MR. TRAUB: Look at the

22 whole request.

23 Q Counsel, is suggesting you take a

24 look at the whole page, Items One through

25 Eight, and is there a second page.

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1 Dawley 26

2 MR. TRAUB: It's dated the

3 same, but I can't tell if it's

4 the same letter.

5 Q Let's deal with the first page

6 that you're looking at. Look through the

7 whole page.

8 How much of those requests, to

9 your recollection, were you able to provide or

10 comply with?

11 A In reference to Number 1 journal

12 entries that I made we had support for.

13 Q I am sorry?

14 A Any journal entries that were made

15 -- that I made there is support for.

16 Description of or reason for it. Number 2, it

17 says it wanted the original mortgage notes. I

18 indicated that I didn't have those. Number

19 three it says the mortgage loan agreement. I

20 did not have those.

21 Q Who had those?

22 A The people that were at the

23 closing. The partners and I would have

24 presumed that Marks, Paneth & Shron had them

25 in order to complete their financial

LEX REPORTING SERVICE
800-608-6085

1 Dawley 27

2 statements.

3 Q Go ahead.

4 A Number four, again loan documents

5 I did not have.

6 Q Who had the loan documents?

7 A The partners would each have had a

8 copy of the loan documents and they would have

9 provided to Marks, Paneth & Shron in order to

10 provide the footnote information.

11 Q Go ahead.

12 A Number 5 accounts payable, there

13 was one item that they are talking about here

14 of \$180,000.00.

15 Q What did that pertain to, sir?

16 A This was a management fee due

17 Dalton for unpaid management fees that we had

18 inherited when we took the property in 2000.

19 Q What was the question that they

20 had with regard to that fee?

21 A They wanted detailed support and

22 all I have was the beginning balance that was

23 carried over from prior to when we took over

24 the books and records.

25 Q Let me understand, Mr. Dawley,

LEX REPORTING SERVICE
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1 Dawley 28

2 there was \$180,000.00 owed management fees

3 prior to Dalton coming on the job?

4 A Yes.

5 Q To what management company was

6 that money owed?

7 A I don't know.

8 Q Who was the management company

9 before Dalton came to the job?

10 A I don't know if it was Prestige,

11 Marion Scott or Grenadier. I had forgotten.

12 Q Were you in any position to

13 determine why this debt was carried on the

14 books and to whom the money was owed?

15 A The reason for leaving it on the

16 books was that it had been expensed in prior

17 years and taken as a deduction on the tax

18 return. If it is written off it then becomes

19 income in the year that it's written off. The

20 other alternative is to go ahead and pay it,

21 which was not done. It's still on the books.

22 Q I am sorry, this was the item that

23 the accountant, the Cameron accountant

24 questioned?

25 A That's what it says, Number 5,

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1 Dawley 29

2 **yes.**

3 **Q** Did any of the previous companies,

4 make claim for that money against Dalton or

5 these investments?

6 **A** **Not that I am aware of.**

7 **Q** Were these companies aware that

8 these monies were outstanding to your

9 knowledge?

10 **A** **I have no -- I don't know what**

11 **they knew or didn't know.**

12 **Q** You indicated that there were two

13 ways of dealing with it and one way is to pay

14 it.

15 To whom could that money have been

16 paid?

17 **A** **It was on the books as a payable**

18 **to Dalton Management.**

19 **Q** To Dalton?

20 **A** **To Dalton Management.**

21 **Q** So that when the accountant asked

22 you about it, they were asking for the backup

23 and support as to why \$180,000.00 was owed to

24 Dalton, is that correct?

25 **A** **That's what their question is**
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1 Dawley 30

2 **Number 5, yes.**

3 **Q** You told them at that time that

4 the money wasn't owed to Dalton?

5 MR. TRAUB: Objection.

6 **Q** Did you?

7 **A** **No.**

8 **The money was on the books as a**

9 **payable to Dalton Management.**

10 **Q** I see.

11 Who entered the money on the

12 books?

13 MR. TRAUB: I don't think

14 he's finished.

15 **A** **The agreement between the Seavey's**

16 **and John Edmonds was that if it's paid to**

17 **Dalton, John Edmonds would get 50 percent of**

18 **it. From what I understand that is still in**

19 **effect today if that money is paid.**

20 **Q** There was a written agreement?

21 **A** **No.**

22 **No, not that I am aware of it.**

23 **Q** How did you learn of this

24 agreement?

25 **A** **I was informed by the Seavey's.**
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1 Dawley 31

2 **Q** Which Seavey informed you of that?

3 **A** **I don't recall.**

4 **It's been too long ago.**

5 **Q** Which of the Seavey's hired you,

6 Mr. Dawley?

7 **A** **I was hired by Dalton Management.**

8 **The owners of Dalton Management**

9 **are Neale Seavey and Avery Seavey. They are**

10 **my employers.**

11 **Q** Did you know any of the Seavey's

12 before coming to this job?

13 **A** **No.**

14 **Q** You had have no previous dealing

15 with the Seavey's before applying for this

16 job?

17 **A** **No.**

18 **Q** How did you learn about this job?

19 **A** **I was completing my job with River**

20 **Rental. We were selling the properties and**

21 **they wanted somebody to come in and set up**

22 **their accounting so that they could go ahead**

23 **and take back the management and manage it**

24 **themselves. I was approached to do that.**

25 **Q** By whom?
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1 Dawley 32

2 **A** **By the Seavey's.**

3 **Q** Who?

4 We have four Seavey's. Was it

5 Neale, Avery, Phyllis or Robert, who

6 approached you?

7 **A** **I believe it was Mrs. Seavey,**

8 **Phyllis Seavey.**

9 **Q** Phyllis?

10 **A** **Yes.**

11 **Q** Phyllis inquired into your

12 experience?

13 **A** **They requested a resume, yes.**

14 **Q** You were interviewed by her?

15 **A** **I was interviewed by the Seavey's,**

16 **yes.**

17 **Q** By Phyllis and other Seavey's?

18 **A** **Avery and Neale.**

19 **Q** I see.

20 As a result of that interview you

21 were hired?

22 **A** **Yes.**

23 **Q** Of the three Seavey's that you

24 mentioned who told you that \$180,000.00 on the

25 books, if not paid to someone else, could be
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1 Dawley 33

2 paid to Dalton Management and divided by John

3 Edmonds and the Seavey's?

4 MR. TRAUB: Objection.

5 Asked and answered.

6 Q Who told you that?

7 MR. TRAUB: Same objection.

8 A I don't remember.

9 You're talking eight, almost nine

10 years ago. It's been on the books for that

11 long.

12 Q When that was suggested to you,

13 given your years in accounting, did you find

14 that suggestion strange?

15 MR. TRAUB: Objection to

16 form.

17 A What do you mean by strange?

18 Q Well, did it seem to you that

19 monies owed to let's say the New York Yankees,

20 presumably for services provided by the New

21 York Yankees, could be divided by the Boston

22 Red Sox?

23 MR. TRAUB: Objection.

24 Q Did it seem to you that was an

25 accounting possibility?

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1 Dawley 34

2 MR. TRAUB: Objection.

3 That is an improper

4 hypothetical.

5 MR. HAYWOODE: That is a

6 hypothetical, yes.

7 Let the witness answer the

8 question.

9 MR. TRAUB: I am not

10 instructing him not to. I am

11 just putting my objection on the

12 record.

13 A The financial statements from

14 prior years had taken the \$180,000.00 as an

15 expense. It carried over into the year when

16 we acquired the company. It was still a

17 payable by Logan Plaza. If it was written off

18 and not paid or never to be paid the partners

19 would have to pick up \$180,000 of income. I

20 don't know what discussions the Seavey's and

21 John Edmonds have or had, but it was told to

22 me that their decision was not to do that.

23 The other alternative if you want

24 to get rid of it was to pay it and split it

25 50/50. That also was not done. So it remains

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1 Dawley 35

2 on the books as a payable and it hasn't

3 changed, nothing has transpired with that

4 amount.

5 Q Sir, did you understand the

6 question that I asked you though, did you

7 consider it a --

8 A You mean the Yankees and the Red

9 Sox?

10 I don't follow baseball. I don't

11 even like baseball.

12 Q The question I am basically asking

13 is that if money is owed to A and money has

14 been expensed owed to A, deduction has been

15 taken owed to A and yet you're then instructed

16 by someone and you don't recall who, is that

17 correct?

18 A Yeah.

19 Q Was it one of the Seavey's?

20 A Possibly, because they would have

21 been the ones that would have had the

22 discussion with John Edmonds to have made the

23 decision.

24 Q But you're theorizing now.

25 It was not John Edmonds, was it?

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1 Dawley 36

2 A No, John did not say anything.

3 Q So it was one of the Seavey's?

4 A It was one of the Seavey's.

5 Q If you were told that's money

6 that's owed to somebody else, pay it to us,

7 did that seem to you something that would be

8 lawful?

9 MR. TRAUB: Objection.

10 That is mischaracterizing

11 the prior testimony. He never

12 testified that he was instructed

13 to pay it to anyone.

14 MR. HAYWOODE: Well, let the

15 record speak for itself.

16 Q Sir, did you consider that what

17 you were asked to do was lawful?

18 MR. TRAUB: Again same

19 objection.

20 He wasn't asked to do any

21 thing.

22 Q Did you consider that the

23 suggestion made to you was a lawful one, sir?

24 MR. TRAUB: Same objection.

25 A The amount that was on the books

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1	Dawley	37	1	Dawley	39
2	was never disbursed to anybody.		2	A I already explained that it	
3	Q But, sir --		3	wasn't.	
4	A The only alternative --		4	One of the ways it can be done is	
5	MR. TRAUB: Let him finish.		5	that if Logan Plaza wrote a check as a	
6	A Was never disbursed and if it was		6	management fee to Dalton. You write off the	
7	disbursed what you would have done is you		7	\$180,000.00 as a payable, so you have an	
8	would have written off the amount as a		8	income in the expense so you have nothing.	
9	distribution and distributed the money 50/50		9	Then Dalton gets the income, they pick it up,	
10	to each of the parties. Nothing ever		10	they give half of it back to John or he has to	
11	transpired and I don't make the decision on		11	pick up his half. Dalton takes the half as an	
12	the characterization on the tax return.		12	expense, because it -- because they paid it to	
13	That's the prerogative of the owners and their		13	John.	
14	decision as told to me was that they did not		14	Q What would have happened if	
15	want to do anything with that amount. They		15	Prestige or Marion Scott or Grenadier had come	
16	wanted to continue to leave it on the books as		16	along within six years and said where is our	
17	a payable so they wouldn't have to pick up		17	\$180,000? What would have happened then?	
18	&90,000.00 each as income. That's -- that's		18	MR. TRAUB: Again objection	
19	all I can tell you.		19	to form. Hypothetical.	
20	Q But you were then told that if you		20	MR. HAYWOODE: Are you	
21	pay it to Dalton that the owners will take 50		21	directing him not to answer?	
22	percent of it each, is that correct?		22	MR. TRAUB: I didn't say	
23	MR. TRAUB: Objection to		23	that. I am just getting my	
24	form.		24	objection out.	
25	A One of the ways that I told you		25	MR. HAYWOODE: Okay.	
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1	Dawley	38	1	Dawley	40
2	that they had suggested taking that amount of		2	Q What would have happened if they	
3	payable off the books was to pay it to Dalton.		3	had showed up in six years and asked for this	
4	That would then be an expense. Whether it was		4	money?	
5	a carry over from management fees from another		5	MR. TRAUB: You're talking	
6	company or not they owned the company. They		6	six years from?	
7	can determine how they want to pay Dalton. If		7	MR. HAYWOODE: Whenever it	
8	they wanted to pay them an extra fee of		8	was owed.	
9	\$180,000 they could so do it. That would be a		9	MR. TRAUB: I guess this is	
10	cash transaction. It would be an expense to		10	my problem with the question.	
11	Logan. It would be split 50/50 between		11	His testimony for the last	
12	Edmonds and the Seavey's. Dalton would pick		12	fifteen minutes has been that the	
13	it up as income, disburse half of it back to		13	money is still there. It was	
14	John Edmonds, for which he would have income		14	never disbursed. It was never	
15	of 50 and Dalton would have income of 50.		15	given. You keep asking these	
16	Q Sir, how would that distribution		16	questions if they came in and	
17	be made, would it be made as a distribution		17	asked for this money back and his	
18	from income?		18	testimony has been, that is my	
19	A It would have to be made from		19	problem, the money was not	
20	income. You have to have cash to pay it.		20	disbursed. That was one way they	
21	Q Would it be made as a capital		21	could do it. They didn't do it	
22	distribution?		22	that way. The money is still	
23	MR. TRAUB: Objection.		23	there. That has been his	
24	That asks for a		24	testimony. Your question is	
25	hypothetical.		25	improper if they come in and now	
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1	Dawley	41	1	Dawley	43
2	and ask for their money. It's		2	Q You're a trained accountant, is	
3	there still there.		3	that correct?	
4	Q My question is as to the		4	A Yes.	
5	correctness?		5	Q That's the profession that you	
6	A You need to explain to me.		6	followed pretty much since 1967, is that	
7	Q The lawfulness of money being owed		7	correct?	
8	to Grenadier or Marion Scott or Prestige being		8	A Yes.	
9	paid to Dalton, is that proper accounting, is		9	Q If someone came to you and said,	
10	that proper disbursement of funds?		10	"Look, I owe money to Prestige and Marion	
11	MR. TRAUB: Objection in		11	Scott and Grenadier Management, but I want you	
12	that A it asks for a legal		12	to pay that money to me," would you consider	
13	conclusion. He's not an		13	that to be a request in accordance with normal	
14	attorney. You asked for the		14	accounting principles as you understood them?	
15	lawfulness. That is a legal		15	MR. TRAUB: Again objection.	
16	conclusion.		16	It's an improper	
17	MR. HAYWOODE: Are you		17	hypothetical. It calls for facts	
18	finished?		18	not in evidence and asks for a	
19	MR. TRAUB: No, I am not		19	legal conclusion and asks for	
20	finished. I get my objection.		20	expert testimony.	
21	You asked your question. I get		21	MR. HAYWOODE: I asked him	
22	to do my objection.		22	for an accounting opinion.	
23	Objection. Asks for an		23	MR. TRAUB: Again it asks	
24	improper legal conclusion. It's		24	for expert testimony when he's	
25	an improper hypothetical.		25	here today as a fact witness, but	
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1	Dawley	42	1	Dawley	44
2	Assumes facts not in evidence and		2	I am not instructing him not to	
3	mischaracterizes prior testimony.		3	answer. My problem though again	
4	If you understand the		4	is your question assumes that the	
5	question you can answer it.		5	money A was paid and B if you pay	
6	A If money was owed then you would		6	the money --	
7	and if you felt that you owed it you would		7	MR. HAYWOODE: My question	
8	have to pay it.		8	assumes nothing.	
9	Q How could Dalton lawfully take		9	I just asked this man does	
10	money that you knew was owed to somebody else?		10	he consider that a proper	
11	The books were telling you that, is that		11	accounting principle if someone	
12	right?		12	asked him that? That is my only	
13	MR. TRAUB: Again objection.		13	question. I didn't ask if it was	
14	Asks for a legal conclusion,		14	paid, if it is not paid. I asked	
15	assumes facts not in evidence.		15	him did he consider that a proper	
16	MR. HAYWOODE: I've heard		16	accounting principle.	
17	that objection. It's calling for		17	MR. TRAUB: My objections	
18	a legal conclusion. This man is		18	are on the record. If you	
19	an accountant. A trained		19	understand you can answer.	
20	accountant.		20	A I didn't give this a lot of	
21	MR. TRAUB: You asked how is		21	thought.	
22	that lawful. That is a legal		22	Q You just did it?	
23	conclusion. In and of itself		23	MR. TRAUB: Again objection.	
24	that is a legal conclusion. He's		24	There was nothing that was	
25	not being offered as an expert.		25	done. That is my problem. Your	
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1 Dawley 45

2 comment it was just done assumes

3 that you have listened to the

4 last twenty minutes of testimony.

5 Nothing was done.

6 Q Sir, did you say to the Seavey's

7 or whoever asked you to do that, "No, that's

8 not the right way. Let's find out who we owe

9 this money to and pay it to them?"

10 MR. TRAUB: Same objection.

11 Nothing was asked to be

12 done.

13 Q Did you ever say that to them?

14 A First of all, I wouldn't -- well,

15 I did not ask any questions. It was recorded

16 on the books and at the request of the

17 partners, which is their prerogative. Nothing

18 illegal transpired in my opinion, because

19 nothing ever took place.

20 What you could have done, which

21 would have been appropriate, is to write it

22 off and pick it up as income.

23 Q Did you suggest that they do that?

24 A It was suggested to both of them.

25 Q By who?

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1 Dawley 46

2 A By Bill Jennings, because he had

3 to do the tax return. He informed them on a

4 tax basis, they would have to pick that up as

5 income. My understanding and I was told --

6 Q When did Bill Jennings --

7 MR. TRAUB: Let him finish.

8 Q When did Bill Jennings inform them

9 of that?

10 A I don't remember, but it was about

11 the time that it was on the books that it was

12 questioned, seven, eight years ago or

13 something it was brought up.

14 Q Did they do it?

15 A Do what?

16 Q What Bill Jennings told them?

17 MR. TRAUB: Objection.

18 Again you're

19 mischaracterizing the testimony.

20 Q Did they do what Bill Jennings

21 told them?

22 MR. TRAUB: Same objection.

23 Q Did they do what Bill Jennings

24 told them?

25 MR. TRAUB: Same objection.

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1 Dawley 47

2 A They were told -- they were not

3 told. They were advised if they wrote it off

4 that it would be picked up as income and the

5 partners would have to pick it up as income

6 without any cash in their pocket.

7 I -- let me finish. My

8 understanding is that the Seavey's didn't

9 care, but that John Edmonds objected, so we

10 did nothing with it at his request as

11 communicated to me.

12 Q Bill Jennings said to you that

13 they could not do what they had proposed in

14 the first instance, is that correct?

15 A Do what?

16 MR. TRAUB: Objection to

17 form.

18 A Do what?

19 Q That they could not simply leave

20 the money there or receive it themselves and

21 divide it, is that what I understood you to

22 testify before that Bill Jennings said that to

23 them?

24 A No.

25 Q You tell me what did you just say

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1 Dawley 48

2 to this record that Bill Jennings said to

3 them?

4 MR. TRAUB: Why don't we

5 read back his answer.

6 Q No.

7 Tell us what you recall that you

8 just said to us in this record that Bill

9 Jennings said.

10 MR. TRAUB: Objection.

11 Asked and answered. The

12 record will speak for itself.

13 MR. KELLY: I'd I had like

14 to hear it read back.

15 MR. HAYWOODE: That may be,

16 but I am asking this witness a

17 question. I am not objecting to

18 the reading back. I want him to

19 tell me now what he remembers

20 saying to me about what Bill

21 Jennings said.

22 MR. TRAUB: Objection to the

23 form.

24 MR. HAYWOODE: It's my

25 deposition. I'd like to hear the

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<p>1 Dawley 49</p> <p>2 witness's answer.</p> <p>3 MR. TRAUB: It's also my</p> <p>4 witness.</p> <p>5 MR. HAYWOODE: Are you</p> <p>6 directing him not to answer at</p> <p>7 this point?</p> <p>8 MR. TRAUB: Absolutely.</p> <p>9 MR. HAYWOODE: That is what</p> <p>10 you should say.</p> <p>11 You realize that is not in</p> <p>12 accordance with 221 or anything</p> <p>13 that happens in depositions.</p> <p>14 You're simply obstructing this</p> <p>15 witness's answer so he can go</p> <p>16 back and check and see what he</p> <p>17 said and give us an answer. I am</p> <p>18 asking for his best recollection.</p> <p>19 MR. TRAUB: You know what,</p> <p>20 it's also improper that you keep</p> <p>21 asking the witness the same</p> <p>22 question for the last twenty</p> <p>23 minutes and you don't like the</p> <p>24 answer or you just don't</p> <p>25 understand it.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 51</p> <p>2 rules on discovery are about.</p> <p>3 The new rules would say answer</p> <p>4 the question and then go find the</p> <p>5 judge if there is a question of</p> <p>6 its admission into evidence.</p> <p>7 That is my understanding and what</p> <p>8 I am looking at is that you're</p> <p>9 simply directing a witness not to</p> <p>10 answer something which perhaps</p> <p>11 you find sensitive.</p> <p>12 MR. TRAUB: I don't find it</p> <p>13 sensitive.</p> <p>14 MR. HAYWOODE: I am just</p> <p>15 trying to get the truth.</p> <p>16 MR. TRAUB: You haven't got</p> <p>17 the truth yet.</p> <p>18 MR. HAYWOODE: Are you</p> <p>19 directing him not to answer?</p> <p>20 MR. TRAUB: I am asking the</p> <p>21 court reporter to read back his</p> <p>22 prior answer.</p> <p>23 MR. HAYWOODE: Fine. That</p> <p>24 is your request, but you're</p> <p>25 directing him not to answer?</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>Dawley 50</p> <p>2 MR. HAYWOODE: All I am</p> <p>3 hearing is objection, objection.</p> <p>4 Now we are getting into a debate</p> <p>5 on the record between counsel,</p> <p>6 which is not what this is about.</p> <p>7 MR. TRAUB: Go get the</p> <p>8 judge.</p> <p>9 MR. HAYWOODE: You're</p> <p>10 directing this witness not to</p> <p>11 answer as to what he remembered</p> <p>12 he testified to a few minutes</p> <p>13 ago?</p> <p>14 MR. TRAUB: Let's stop.</p> <p>15 We'll go get Judge Baer. If you</p> <p>16 want to go to Judge Baer I have</p> <p>17 no problem doing it. I know I am</p> <p>18 right on this one. You can laugh</p> <p>19 all you want. I would like the</p> <p>20 record to reflect he's laughing.</p> <p>21 MR. HAYWOODE: Let the</p> <p>22 record reflect, that I think the</p> <p>23 suggestion that we go find Judge</p> <p>24 Baer and interrupt him on this is</p> <p>25 against everything that the new</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 52</p> <p>2 I don't consent to the read</p> <p>3 back at this point. This is my</p> <p>4 deposition.</p> <p>5 MR. TRAUB: It's my witness.</p> <p>6 MR. HAYWOODE: You don't</p> <p>7 have the right to say that.</p> <p>8 MR. TRAUB: We are going to</p> <p>9 stop this deposition right now</p> <p>10 and we are going to get Judge</p> <p>11 Baer. We will tell him you</p> <p>12 clearly don't understand how to</p> <p>13 take a deposition. Either you</p> <p>14 let the reporter read back the</p> <p>15 question or we will go and get</p> <p>16 the judge.</p> <p>17 MR. HAYWOODE: Oh, have we</p> <p>18 come to this.</p> <p>19 MR. TRAUB: We will stop</p> <p>20 this deposition right now. We</p> <p>21 will go get Judge Francis. I</p> <p>22 have no problem getting the</p> <p>23 Magistrate Judge. That is what</p> <p>24 we are here for.</p> <p>25 MR. HAYWOODE: You are</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 53</p> <p>2 interrupting the deposition in</p> <p>3 the middle of my questioning.</p> <p>4 MR. TRAUB: You can make</p> <p>5 your record all you want. I made</p> <p>6 my objection. Either you can</p> <p>7 have the court remember read back</p> <p>8 his answer so you can hear it or</p> <p>9 we will stop and get Judge</p> <p>10 Francis.</p> <p>11 MR. HAYWOODE: I heard the</p> <p>12 witness's answer the first time.</p> <p>13 I heard what the witness said</p> <p>14 after he made the answer. I want</p> <p>15 to know what the witness recalls</p> <p>16 of what he said, because he's</p> <p>17 telling me something entirely</p> <p>18 different and I don't think</p> <p>19 counsel ought not to be arguing</p> <p>20 this.</p> <p>21 If you're directing him not</p> <p>22 to answer let's make that clear</p> <p>23 on the record that is what you're</p> <p>24 doing.</p> <p>25 You're directing him not to</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 55</p> <p>2 MR. HAYWOODE: As I</p> <p>3 understand the rules that is all</p> <p>4 you can do here.</p> <p>5 MR. TRAUB: Can I finish</p> <p>6 now?</p> <p>7 MR. HAYWOODE: Go ahead.</p> <p>8 MR. TRAUB: Thank you.</p> <p>9 Mel, you asked him a</p> <p>10 question. He gave you an answer.</p> <p>11 You asked him another question.</p> <p>12 I objected to it as</p> <p>13 mischaracterizing prior</p> <p>14 testimony. You then asked the</p> <p>15 witness, "Can you tell me what it</p> <p>16 is you think you said to me?" I</p> <p>17 said the record speaks for itself</p> <p>18 and we can have the record read</p> <p>19 back. You objected to that and</p> <p>20 you wanted the witness to</p> <p>21 re-characterize his prior</p> <p>22 testimony. I will let him</p> <p>23 answer, but first, Mel, I want</p> <p>24 the record read back.</p> <p>25 MR. HAYWOODE: No.</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 54</p> <p>2 answer this question, is that</p> <p>3 correct?</p> <p>4 MR. TRAUB: No, and don't</p> <p>5 put words in my mouth.</p> <p>6 Mel, stop it.</p> <p>7 MR. HAYWOODE: You can make</p> <p>8 an objection on the record and</p> <p>9 you can, after making the</p> <p>10 objection, let him answer. I</p> <p>11 understand the new rules and the</p> <p>12 old rules are the same on this or</p> <p>13 you can tell him don't answer the</p> <p>14 question, which are you doing?</p> <p>15 MR. TRAUB: Mel, we are done</p> <p>16 here.</p> <p>17 MR. HAYWOODE: We may be,</p> <p>18 because you're determined to walk</p> <p>19 out the door and I am certainly</p> <p>20 not going to restrain you here.</p> <p>21 Which are you doing, Darren,</p> <p>22 are you telling him don't answer</p> <p>23 the question or are you making an</p> <p>24 objection, but he may answer?</p> <p>25 MR. TRAUB: I am objecting.</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 56</p> <p>2 MR. TRAUB: Then that is my</p> <p>3 problem.</p> <p>4 MR. HAYWOODE: I want to</p> <p>5 hear from this witness what he</p> <p>6 meant when he said something that</p> <p>7 Bill Jennings said.</p> <p>8 Are you directing him not to</p> <p>9 respond to that at this point</p> <p>10 unless the record is read back,</p> <p>11 is that what you're saying?</p> <p>12 MR. TRAUB: Mel, this is the</p> <p>13 most unprofessional conversation</p> <p>14 I've ever had at a deposition.</p> <p>15 MR. HAYWOODE: I don't know</p> <p>16 how many years you have been</p> <p>17 doing it, but I have been doing</p> <p>18 it 48, so whatever.</p> <p>19 MR. TRAUB: Have you been</p> <p>20 doing it correct for 48? I don't</p> <p>21 think so.</p> <p>22 MR. HAYWOODE: I'd like to</p> <p>23 think so.</p> <p>24 MR. TRAUB: I'd like to</p> <p>25 think I am doing it correctly</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>

1	Dawley	57	1	Dawley	59
2	too.		2	have to pick it up as income 50 percent each.	
3	MR. HAYWOODE: Are you		3	The partners decided not to do that so we left	
4	telling him not to answer?		4	it on the books where it still is.	
5	MR. TRAUB: Mel, I am		5	Q So that it's fair to say that the	
6	telling you either we let the		6	partners, as you testified, did not take the	
7	record be read back or we stop		7	advice or the alternative suggested by William	
8	and go get Judge Francis to		8	Jennings?	
9	figure out this dispute.		9	A That's correct.	
10	MR. HAYWOODE: There is not		10	It's still in the books.	
11	a dispute. I am only asking you,		11	Q That was seven years ago?	
12	are you telling the witness not		12	A When it was put on I think that's	
13	to answer?		13	about right. It was about seven or eight	
14	MR. TRAUB: I am telling the		14	years ago.	
15	witness not to answer till the		15	Q That \$180,000.00 has sort of sat	
16	record is read back.		16	there in limbo for seven or eight years, is	
17	MR. HAYWOODE: Good, fine.		17	that your understanding of it?	
18	That is your response.		18	A It's still there as a payable.	
19	You're directing him not to		19	Q I see.	
20	answer until the record is read		20	Now, when you say that the	
21	back.		21	partners conveyed this to you, you never had	
22	MR. TRAUB: Correct.		22	any discussion with John Edmonds on this	
23	MR. HAYWOODE: Read the		23	subject directly, did you?	
24	record back.		24	A No.	
25	Note my objection to what		25	Q You can't recall which of the	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	
1	Dawley	58	1	Dawley	60
2	you're doing, because you		2	Seavey's you had that conversation with, is	
3	directed the witness not to		3	that correct?	
4	answer a question, which I said		4	A That's correct.	
5	is in violation of everything		5	Q To your knowledge, William	
6	that the new rules say.		6	Jennings was aware that \$180,000 was sitting	
7	MR. TRAUB: I've also said		7	undeclared for seven or eight years and that	
8	that we can stop and you can go		8	no action was taken with regard to it to your	
9	plead your case to Judge Baer.		9	knowledge, is that correct?	
10	MR. HAYWOODE: We can take		10	MR. KELLY: I am going to	
11	it up with Judge Francis and		11	object to the form and I will	
12	Judge Baer and Judge I don't		12	expand on it if you'd like me to,	
13	know. I don't know, Suda and		13	otherwise he's not my witness. I	
14	everybody else later.		14	can't direct him anything.	
15	Can we have the record read		15	MR. TRAUB: I would object.	
16	back? Let's hear the witness's		16	You can answer if you know.	
17	testimony about William Jennings.		17	Don't guess, please.	
18	(Whereupon, the requested		18	A Well, I don't know what Bill's	
19	portion was read back by the		19	thought process was, but I know the amount is	
20	reporter.)		20	still on the books. Because it's still on the	
21	Q You said Bill Jennings advised		21	books, there has been no financial consequence	
22	them to take the money as income and to pay		22	to the income of the partners and until	
23	tax on it, is that correct?		23	something happens to it there wouldn't be so	
24	A Bill Jennings told them the		24	it's continued to be on the books as a	
25	consequences of writing it off that they would		25	payable.	
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	800-608-6085			800-608-6085	

1 Dawley 61

2 **Q** Do you know what the Quality and

3 Review Committee is at Marks, Paneth & Shron?

4 **A** **No.**

5 **Q** Did you ever hear that phrase or

6 feature at Marks, Paneth & Shron?

7 **MR. TRAUB:** We are going to

8 mark that as Exhibit 1, right?

9 **MR. HAYWOODE:** It is okay,

10 yes.

11 This will be number 1 the

12 May 16th the letter.

13 (A May 16th letter was

14 marked as Plaintiff's

15 Exhibit 1, for

16 identification, as of this

17 date.)

18 **Q** Did you ever hear of a Quality

19 Committee Review up there?

20 **A** **No.**

21 **Q** You never heard that any Quality

22 Review Committee or anybody at Marks, Paneth &

23 Shron, ever questioned how \$180,000.00 just

24 sat on those books for eight years and nobody

25 questioned it?

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1 Dawley 62

2 **A** **No.**

3 **MR. TRAUB:** Objection to the

4 form.

5 **Q** To your knowledge, you never heard

6 another question raised about it?

7 **A** **No.**

8 **Q** Did anyone ever talk to you since

9 that time and say do this or do that with it

10 that money or don't do anything with it; did

11 anyone else ever talk to you about it?

12 **A** **No.**

13 **Q** When the Cameron people came to

14 you, did you explain that whole story to them

15 as to what it was and how it came about?

16 **A** **I don't recall if I did or not.**

17 **We discussed so many accounting issues and**

18 **things that I couldn't tell you.**

19 **Q** Let me get to this, did there come

20 a time when Cameron, Pryce & Griffiths

21 indicated to you that there was approximately

22 a \$4,000,000,000.00 disparity between what

23 they were able to justify in the books and

24 records kept by you; Dalton Management; and

25 the financial statement generated at the end

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1 Dawley 63

2 of the tax year 2006 by Marks, Paneth & Shron,

3 did they ever indicate that to you?

4 **MR. KELLY:** Objection to

5 form.

6 **A** **There was some discussion that**

7 **they couldn't reconcile that I don't remember.**

8 **It was never specific. It was just a total**

9 **figure that they said they couldn't reconcile**

10 **without any specifics so I didn't do anything**

11 **with it.**

12 **Q** What is Dalton's role, Dalton is

13 the accountant for these companies?

14 **MR. TRAUB:** Objection to the

15 form.

16 **Q** Dalton is the accountant for these

17 companies?

18 **A** **Dalton is the managing agents for**

19 **those companies.**

20 **Q** Dalton is responsible to keep the

21 primary books for these companies, is that

22 correct?

23 **A** **Yes.**

24 **Q** Dalton is responsible to keep the

25 documentation for the books that are

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1 Dawley 64

2 maintained by it, is that correct?

3 **A** **When you say documentation for**

4 **what?**

5 **Q** For all financial transactions.

6 **A** **Whatever we have.**

7 **Q** Is it not the responsibility of

8 Dalton to maintain all documents and records

9 pertaining to whatever transactions took

10 place?

11 **A** **We have invoices for all checks**

12 **written. We have deposit tickets for all**

13 **deposits made. I don't know what else you're**

14 **talking about. That's what the managing**

15 **agents does. They collect the revenues, they**

16 **bill the tenants, they took them to court when**

17 **they don't pay and we pay the bills.**

18 **Q** Sir, what is a daily trial

19 balance?

20 **A** **A daily trial balance?**

21 **Q** Yes.

22 **A** **You will have to define that for**

23 **me.**

24 **Q** Well, what is a trial balance?

25 **A** **Again you will need to define what**

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<p>1 Dawley 65</p> <p>2 you mean by a trial balance.</p> <p>3 Q Sir, you took a degree in</p> <p>4 accounting, is that correct?</p> <p>5 A Well, we had some problems between</p> <p>6 Cameron's understanding of a trial balance on</p> <p>7 the system and what we provide.</p> <p>8 BJ Murray is the software that is</p> <p>9 used by the company. A lot of companies in</p> <p>10 the city use for it for property management.</p> <p>11 That is what it was developed for and they</p> <p>12 have to -- I want to have an understanding of</p> <p>13 what is meant by trial balance and then I can</p> <p>14 respond.</p> <p>15 Q Well, sir, you've been accounting</p> <p>16 since 1967, is that correct?</p> <p>17 A Yes.</p> <p>18 Q You have been accounting since</p> <p>19 1967?</p> <p>20 A Yes.</p> <p>21 Q It's your recollection and</p> <p>22 testimony today, that you never heard the</p> <p>23 phrase trial balance before Cameron, Price &</p> <p>24 Griffiths raised it with you?</p> <p>25 MR. TRAUB: Objection. LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 67</p> <p>2 Q So you say that's what a trial</p> <p>3 balance is?</p> <p>4 A We produce a trial balance every</p> <p>5 month at the end of each month.</p> <p>6 Q You, you're saying Dalton?</p> <p>7 A Dalton prepares it off the BJ</p> <p>8 Murray System and files it in each month's</p> <p>9 activity for every company.</p> <p>10 Q Do you recall Cameron, Pryce &</p> <p>11 Griffiths saying to you that you don't have</p> <p>12 trial balances, it's impossible for us to</p> <p>13 recalculate your figures?</p> <p>14 Do you recall if they said that to</p> <p>15 you?</p> <p>16 A They did and I repeatedly tried to</p> <p>17 explain to them how the BJ Murray system</p> <p>18 works. It's used by -- I don't know, over one</p> <p>19 time it had over 500 clients, because the</p> <p>20 other software that were available could not</p> <p>21 produce the detail that was required for all</p> <p>22 the subsidy programs that Manhattan has.</p> <p>23 When I came to New York fifteen</p> <p>24 years ago I looked at this system and it's</p> <p>25 like, "There's got to be something better." I LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 66</p> <p>2 Mischaracterizes his prior</p> <p>3 testimony.</p> <p>4 A That isn't what I said.</p> <p>5 I said --</p> <p>6 Q That's why I am asking the</p> <p>7 question.</p> <p>8 A I can give you --</p> <p>9 Q I am waiting for you to tell me.</p> <p>10 MR. HAYWOODE: I am noting</p> <p>11 that your counsel is commenting</p> <p>12 that I am misstating what you</p> <p>13 just said. I am just inquiring</p> <p>14 about what you just said so you</p> <p>15 can make it clearer.</p> <p>16 Q Please, sir.</p> <p>17 A A trial balance is a listing of</p> <p>18 the different accounts that are used on the</p> <p>19 books and records at a specific time, usually</p> <p>20 at the end of the month. Also at the end of</p> <p>21 the year.</p> <p>22 Q What's done?</p> <p>23 A We produce a trial balance every</p> <p>24 month for every company and put it in the</p> <p>25 file. LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 68</p> <p>2 contacted several software companies. One of</p> <p>3 those companies was Yardi. I asked their</p> <p>4 sales people can you provide me this detail</p> <p>5 and breakdown for all these subsidies? They</p> <p>6 couldn't. Yardi subsequently bought BJ Murray</p> <p>7 and now they have expanded their property</p> <p>8 management software to accommodate these</p> <p>9 various programs, but a trial balance is</p> <p>10 prepared every month and filed every month.</p> <p>11 Q To your knowledge, is there</p> <p>12 another system in which a trial balance would</p> <p>13 be prepared more often than every month to</p> <p>14 your knowledge?</p> <p>15 A You can probably run a trial</p> <p>16 balance any time you want, but we run it at</p> <p>17 the end of each month.</p> <p>18 Q To your knowledge, somewhere else</p> <p>19 would they tend to run it every day, every</p> <p>20 week or what?</p> <p>21 MR. TRAUB: Objection.</p> <p>22 A I have no idea.</p> <p>23 Q You have no idea? You have no</p> <p>24 experience with that?</p> <p>25 A No. LEX REPORTING SERVICE 800-608-6085</p>

1 Dawley 69

2 **Q** Is this the first position you've

3 had that you function in where someone has

4 required a trial balance?

5 **A** No.

6 **We've had trial balances, but I've**

7 **always prepared a trial balance once a month.**

8 **Q** Once a month?

9 **A** Yes.

10 **Q** It hasn't been your practice to do

11 it anymore frequently than that?

12 **A** No.

13 **Q** This again is a question.

14 If someone came to do an audit and

15 they didn't see a more frequent trial balance,

16 would they have difficulty in completing the

17 audit that they were trying to complete?

18 MR. TRAUB: Objection to the

19 form.

20 **Q** Would it be easier to do it if the

21 trial balance was run every week or every two

22 weeks than if it was run every month?

23 MR. TRAUB: Same objection.

24 **A** **When you do an audit you don't run**

25 **an audit from a trial balance.**

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1 Dawley 70

2 **Q** It wouldn't be of any use to you

3 at all?

4 **A** No.

5 **Q** The system that you used, does it

6 produce a yearly trial balance?

7 **A** Yes.

8 **Q** It does at the end of the year?

9 **A** Yes.

10 **Q** Did Cameron, Pryce & Griffiths ask

11 you to produce that yearly trial balance?

12 **A** **I think we did. It's about that**

13 **thick. (Indicating.)**

14 MR. TRAUB: Let the record

15 reflect --

16 **A** **About two inches thick.**

17 **Q** Is it your recollection that you

18 gave it to them?

19 **A** **I think we did. I don't recall,**

20 **but I know we have monthly trial balances,**

21 **which are an accumulation of a yearly which**

22 **all of that was provided.**

23 **Q** Now, as you understand it, sir,

24 what is the role of Marks, Paneth & Shron as

25 opposed to Dalton Management.

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1 Dawley 71

2 **A** **They come in review the books,**

3 **make a determination if the different accounts**

4 **are correct. If they are not they make**

5 **adjustments and produce a financial statement**

6 **Q** When they make the determination

7 as to if your accounts are correct, Dalton

8 accounts are correct, what if anything happens

9 then?

10 **A** **What do you mean what happens?**

11 **Q** What is the role of Marks, Paneth

12 & Shron, with regard to Dalton's books and

13 records?

14 **A** **To do an audit on the books.**

15 **Q** Do they have any other role in

16 that capacity?

17 **A** **What do you mean?**

18 **Q** Do they do anything other than do

19 the audit on the books?

20 **A** **That's what they are hired to do,**

21 **to do the audit.**

22 **Q** Are they hired for some other

23 purpose also?

24 **A** **We have hired them to help us with**

25 **the filing of a rent increase, like we just**

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1 Dawley 72

2 **did with Fifth and 106th that we just filed.**

3 **Q** Do you hire them for anything

4 else?

5 **A** **Tax return.**

6 **Q** Anything else?

7 **A** **Not that I recall.**

8 **Q** Well, sir, if Cameron, Pryce &

9 Griffiths say to you at some point, and I've

10 asked this question before, that your books

11 compared with the financial statement prepared

12 by Marks, Paneth & Shron show a

13 \$4,000,000,000.00 discrepancy or did they

14 mention any amount of discrepancy between what

15 your records were showing and what Marks,

16 Paneth & Shron were showing in the financial

17 statement, did they ever say that to you?

18 **A** **In the BJ Murray system we keep**

19 **the books on a cash basis. At the end of the**

20 **year in order to give a correct financial**

21 **picture of the company you have to put in**

22 **depreciation, amortization, payables,**

23 **receivables, the accruals. Once that's done**

24 **then you do your financial statement.**

25 **Q** You're testifying then that Dalton

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<p>1 Dawley 73</p> <p>2 keeps its books on a cash basis, is that</p> <p>3 correct?</p> <p>4 A That's correct.</p> <p>5 Every dollar that comes in gets</p> <p>6 recorded and every expense that's goes out</p> <p>7 gets recorded.</p> <p>8 Q So that Marks, Paneth & Shron are</p> <p>9 making the financial statement on the accrual</p> <p>10 basis, is that correct?</p> <p>11 A That's what's required, yes.</p> <p>12 Q So that as a result of that</p> <p>13 someone looking to determine what the</p> <p>14 actuality is of what's going on in the</p> <p>15 company, would they look at your books on the</p> <p>16 cash basis or would they go to Marks, Paneth &</p> <p>17 Shron on the accrual basis to answer that</p> <p>18 question?</p> <p>19 A Okay.</p> <p>20 We provide a balance at the end of</p> <p>21 the year for all the accounts on a sheet of</p> <p>22 paper. There is a trial balance that has</p> <p>23 those figures. There are adjustments made and</p> <p>24 a final trial balance is produced and those</p> <p>25 figures are used to produce a financial</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 75</p> <p>2 saying?</p> <p>3 A I know you don't.</p> <p>4 Q They took your books and they</p> <p>5 wanted to do what, sir?</p> <p>6 A We took our books. We run a list,</p> <p>7 a trial balance. You then adjust that trial</p> <p>8 balance. One item you can adjust for is</p> <p>9 depreciation. We didn't make the</p> <p>10 determination of depreciation. Their tax</p> <p>11 department does. Marks, Paneth & Shron's tax</p> <p>12 department. That gets to be adjusted. That</p> <p>13 puts depreciation on the final trial balance</p> <p>14 that's used to produce the financial</p> <p>15 statement. They were given all of that</p> <p>16 information. They were given everything.</p> <p>17 Q When you say they, they Cameron --</p> <p>18 A Yes.</p> <p>19 Q -- Griffiths & Pryce?</p> <p>20 A Yes.</p> <p>21 They were given that information.</p> <p>22 They were given all the work papers that were</p> <p>23 there to show them and be able to track from</p> <p>24 the trial balance to the financial statement</p> <p>25 that was produced.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 74</p> <p>2 statement. That trial balance with those</p> <p>3 adjustments and those changes was given to</p> <p>4 them for every company for every year that we</p> <p>5 have so they could trace right from our books</p> <p>6 to the accrual to the financial and everything</p> <p>7 ties in so there is not \$4,000,000,000.00 of</p> <p>8 difference.</p> <p>9 Q I am sorry?</p> <p>10 A There is not \$4,000,000,000.00 of</p> <p>11 difference. It tracks perfectly.</p> <p>12 Q It was never suggested to you that</p> <p>13 there is? In other words, they didn't say to</p> <p>14 you that we are looking at your books and we</p> <p>15 are asking you for justification and you don't</p> <p>16 have it ?</p> <p>17 A Oh, yes.</p> <p>18 Q They did say that?</p> <p>19 A No.</p> <p>20 They took our books and wanted to</p> <p>21 get to the tax to the financial statement. I</p> <p>22 gave them the trial balances.</p> <p>23 Q Let me stop you there?</p> <p>24 A Let me finish.</p> <p>25 Q I don't understand what you're</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 76</p> <p>2 Q Is it the role of the auditor, to</p> <p>3 suggest journal entry adjustments to Dalton as</p> <p>4 the accountant?</p> <p>5 A That's usually what transpires,</p> <p>6 yes.</p> <p>7 Q They did do that?</p> <p>8 A Yes.</p> <p>9 Q In 2006 that we were concerned</p> <p>10 with?</p> <p>11 A Yes.</p> <p>12 Q When they suggest these journal</p> <p>13 entries, is there some documentation or</p> <p>14 writing that comes from them to Dalton as to</p> <p>15 why they want you to make adjustments?</p> <p>16 A There is a list of journal entries</p> <p>17 that were attached to the information they</p> <p>18 were given with an explanation of what was</p> <p>19 debited and credited to get to the new</p> <p>20 balance.</p> <p>21 MR. TRAUB: When you say</p> <p>22 they?</p> <p>23 THE WITNESS: To Cameron,</p> <p>24 Pryce & Griffiths.</p> <p>25 MR. TRAUB: I was telling</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

1	Dawley	77
2	him to clarify his pronouns for	
3	the record.	
4	A Cameron, Pryce & Griffiths.	
5	MR. HAYWOODE: Can you read	
6	back the last question and	
7	answer, please?	
8	(Whereupon, the requested	
9	portion was read back by the	
10	reporter.)	
11	MS. HAYWOODE: Let me	
12	understand the answer. Again	
13	counsel has clarified an answer	
14	with his witness while his	
15	witness was testifying.	
16	What was the last answer?	
17	MR. TRAUB: I want to put on	
18	the record, I waited until my	
19	witness was finished answering	
20	and then I instructed that he	
21	should clarify pronouns so that	
22	the record is clear. For some	
23	reason, Mr. Haywoode had an issue	
24	with my clarification statement.	
25	I stand by my instructions to the	
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	800-608-6085	
1	Dawley	78
2	witness to try not to use	
3	pronouns and clarify who he is	
4	talking about so we can have a	
5	clear record.	
6	(Whereupon, the requested	
7	portion was read back by the	
8	reporter.)	
9	MR. HAYWOODE: Mr. Dawley, I	
10	am going to show you a list of	
11	adjusting journal entry reports;	
12	one, two, three, four, five	
13	pages, that pertains to these	
14	investments. We are going to	
15	mark the five pages Plaintiff's	
16	Exhibit 2.	
17	(A five page list of	
18	adjusting journal entries	
19	were marked as Plaintiff's	
20	Exhibit 2, for	
21	identification, as of this	
22	date.)	
23	Q Now, I understand that they	
24	pertain to Logan. It pertains to Logan Plaza	
25	only.	
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	800-608-6085	
1	Dawley	79
2	MR. TRAUB: I want you to	
3	look at all five pages.	
4	A Okay.	
5	Q Let me ask you first, Mr. Dawley,	
6	how many of those adjustments are depreciatio..	
7	adjustments?	
8	A There is -- there is one	
9	depreciation. There is one amortization.	
10	There is one depreciation.	
11	Q If you would indicate which of the	
12	five pages?	
13	A Journal entry 13 is depreciation.	
14	Q Yes.	
15	A \$372,020.00.	
16	Q That's Number 13 at Page 3?	
17	A That would be Page 3.	
18	Q What else?	
19	A You said depreciation. That's the	
20	depreciation entry.	
21	Q Now, what is the total amount on	
22	that report, if you can tell from there, of	
23	the journal entry adjustments?	
24	A I can't, because you'd have to add	
25	each one of them up. You'd have to add all	
	LEX REPORTING SERVICE	
	800-608-6085	
1	Dawley	80
2	five pages up.	
3	Q That's not done there?	
4	A No, there is no total. It's just	
5	by journal entry.	
6	Q With regard to this one property,	
7	is it fair to say that they are 22 requests	
8	for adjustments of journal entires on the	
9	first page	
10	A There is three adjustment entry.	
11	Q I am sorry?	
12	A There is three journal entries,	
13	not adjustment entries.	
14	Q How many individual lines of	
15	journal adjustment entries are on that page?	
16	A Twenty-two.	
17	Q At Page 2 are there nineteen?	
18	A Nineteen.	
19	Q Are there thirteen on Page 3?	
20	A Thirteen on Page 3.	
21	Q Are there seventeen on Page 4?	
22	A Seventeen on Page 4.	
23	Q Twenty-four on Page 5?	
24	A How many did you say?	
25	Q Twenty-four?	
	LEX REPORTING SERVICE	
	800-608-6085	

1 Dawley 81

2 **A Twenty-four on Page 5.**

3 **Q** Is it four or five?

4 **A Page 5.**

5 **Q** Page 6 there is seven more there?

6 **A There is seven on Page 6.**

7 **Q** Now, is that the form in which

8 these journal adjustments came to you?

9 **A Yes.**

10 **Q** Is there any other information,

11 which came to you with those journal

12 adjustments?

13 **A No.**

14 **Q** As to each of these journal

15 adjustments, was there any information

16 communicated to you in writing or in any other

17 way as to why the adjustments were being paid

18 other than the depreciation and accumulated

19 depreciation adjustments? Is there anything

20 that came to you to explain why there was

21 done?

22 **A This was done to take the books.**

23 **Q** My question is did anything come

24 to you in writing from Marks, Paneth & Shron

25 to explain why these adjustments were made?

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1 Dawley 82

2 MR. TRAUB: That was not

3 your prior question.

4 MR. HAYWOODE: Then I

5 withdraw the prior question and I

6 put this question.

7 **Q** Did anything come to you in

8 writing or any communicative form that is

9 memorialized, that exists telling you how

10 these changes were made?

11 **A Not that I recall.**

12 **Q** Did anyone come to you and meet

13 with you and tell you how and why these

14 changes were made?

15 **A No.**

16 **Q** Did you ever debate with Marks,

17 Paneth & Shron, or anyone from Marks, Paneth &

18 Shron, why or how these changes were made?

19 **A No.**

20 **Q** Did you ever communicate back to

21 Marks, Paneth & Shron, your acceptance as to

22 why these changes were made?

23 **A I believe we signed off on them,**

24 **but I don't recall, no.**

25 **Q** Do you have such a document

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1 Dawley 83

2 indicating that you signed off on it?

3 **A Not with me.**

4 **Q** Do you maintain such a document

5 that you would have signed off on all these

6 changes on each of the buildings?

7 **A If it's -- if it's there then it**

8 **would be in a file.**

9 **Q** Sir, do you have a direct

10 recollection as you testified today that such

11 a response was actually made?

12 **A No.**

13 **Q** You don't?

14 **A No.**

15 **Q** So it's possible it wasn't made?

16 **A Possible.**

17 **Q** With regard now to this

18 information being provided in the tax year

19 2006, after the adjustments were made and

20 after the journal entries were suggested to

21 you by Marks, Paneth & Shron what if anything

22 did you do with regard to Dalton's books?

23 **A At the end of the year, I adjust**

24 **the balance sheet accounts to the balances**

25 **that were in agreement with the financial**

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1 Dawley 84

2 **statement that was produced, so that when I**

3 **start out the new year I had those balances on**

4 **the books.**

5 **Q** Did you change the journal entries

6 involved?

7 **A Did I do what?**

8 **Q** Did you change any journal entry

9 in Dalton books?

10 **A No.**

11 **Q** Did you do anything to make

12 Dalton's books, comply with the journal entry

13 adjustments that Marks, Paneth & Shron had

14 suggested to you?

15 MR. TRAUB: Objection to the

16 form.

17 **A I just answered.**

18 **Q** I am sorry, sir?

19 **A I answered that in order to start**

20 **the new year, I have to have my balance sheet**

21 **accounts in agreement with the financial**

22 **statements that were produced at the end of**

23 **the prior year. What I do at the end of the**

24 **year is I take those balance sheet accounts**

25 **and I adjust them so that they agree with the**

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1 Dawley 85

2 **financial statements that were produced at the**

3 **end of the year. I don't copy each of those**

4 **adjustments. It's a waste of my time, because**

5 **everything --**

6 **Q** You don't copy where, sir?

7 **A** I don't make all of those

8 **adjustments on our books one at time, because**

9 **it's a waste of time. All the income and**

10 **expense accounts at the end of the year get**

11 **zeroed out to the partner's equity. So all I**

12 **need to start my books at the beginning of the**

13 **year are the balance sheet accounts.**

14 **Q** When you say that your quarterly

15 **information is correct, the information that**

16 **you provide, your quarterly reports?**

17 **A** Our information that we provide

18 **internally is on a cash basis, not on an**

19 **accrual basis.**

20 **Q** It would never be congruent with

21 **whatever Marks, Paneth & Shron was finalizing,**

22 **is that correct?**

23 **A** No.

24 **Q** So that if someone would come 100

25 **years from now.**

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1 Dawley 86

2 **A** Right.

3 **Q** Look at your cash basis records.

4 **A** Right.

5 **Q** They would never know the

6 **actuality, from looking at your records, as to**

7 **what the end financial statement said, is that**

8 **correct?**

9 MR. TRAUB: Objection to the

10 form.

11 **A** No.

12 **Q** That's not so?

13 **A** You're not understanding.

14 **Q** Well, tell me. My question is

15 simple.

16 You say that Marks, Paneth & Shron

17 suggested you use certain journal entry

18 adjustments and you say you did not waste your

19 time as I understand you, now correct me if I

20 am wrong, making those adjustments on the

21 actual books, so that Marks, Paneth & Shron

22 would show something in their books that

23 wouldn't be in your books, is that correct?

24 MR. TRAUB: Objection to the

25 form.

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1 Dawley 87

2 **Q** Do you understand the question?

3 **A** Yeah, okay. You're not

4 **understanding the answer, but that's okay.**

5 **My books are kept on a cash basis.**

6 **Those adjustments are made -- let me finish.**

7 **Those adjustments are made to put the books on**

8 **an accrual basis to reflect the activity of**

9 **the year on a correct financial audit basis.**

10 **When they are done I don't go back and change**

11 **all the income and expense accounts, because**

12 **I'm not going to use those when I start my new**

13 **year. The only thing I am going to use is the**

14 **balance sheet trial balance that I need to**

15 **start the new year. So I take my balances, I**

16 **adjust them to their balances at the end of**

17 **the year on the balance sheet only so I can**

18 **start my new year, because when I start my new**

19 **year all the money that comes in and all the**

20 **money that goes out on day one is zero. So if**

21 **I made all those adjustments, I would zero**

22 **them all out immediately. It's a waste of my**

23 **time to put them in and take them out to zero.**

24 **Q** If I were to look at the capital

25 **accounts in the Dalton records would they be**

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1 Dawley 88

2 correct?

3 **A** We have a partner's equity

4 **account.**

5 **Q** Yes, your capital account.

6 **A** Okay, that's whatever is on the

7 **books at the end of the year.**

8 **Q** Which books, sir?

9 **A** Whatever is adjusted for the audit

10 **at the end of the year is the beginning**

11 **balance that I have for the next year.**

12 **Q** Sir, if I were to look at Dalton's

13 **books, would it be correct, would it give me**

14 **correct information as to the capital account?**

15 MR. TRAUB: Objection to the

16 form.

17 **A** When?

18 **Q** Now or any time between March of

19 **20007 when this began, while Cameron Pryce &**

20 **Griffiths were looking at it, would they be**

21 **getting information or information that you**

22 **didn't correct because you didn't feel that**

23 **you had time to do that?**

24 **A** The capital account is one item on

25 **a balance sheet. I know you don't know, but**

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1 Dawley 89

2 **it is. At the end of the year --**

3 MR. TRAUB: Let him finish.

4 **Q** I don't want you to worry about

5 what I don't know. I want to hear what you

6 know and what you're saying, so again I don't

7 take umbrage you saying that I don't know.

8 Let's not assume that I don't know.

9 Let me ask you a simple question.

10 If I am asking for the truth as to what was

11 going on as to the capital account, can I look

12 at Dalton's records and find that out?

13 **A** **The capital account at the end of**

14 **the year is part of your balance sheet and the**

15 **capital account, the assets and liabilities in**

16 **the capital account, which make up the balance**

17 **sheet are all adjusted to the balances at the**

18 **end of the year to start the new year off. So**

19 **if you look at our books on January 1st,**

20 **you're going to see all the balance sheet**

21 **accounts. You're going to see the income and**

22 **expenses with zero.**

23 **Q** If I look at it before January

24 1st?

25 **A** **Right.**

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1 Dawley 90

2 **Q** Would I be able to tell what was

3 going on?

4 **A** **As to what?**

5 **Q** As to the actuality of the capital

6 accounts?

7 **A** **You should.**

8 **Q** You're saying you should?

9 **A** **You should.**

10 **Q** How would you do that?

11 How would it be possible to

12 ratiocinate what you did at the end of the

13 year if I am looking at these documents and

14 items before the end of the year?

15 **A** **The capital account during the**

16 **year is kept on a cash basis. If you look at**

17 **the books and records, at any time during the**

18 **year, the capital account will reflect what**

19 **took place on a cash basis.**

20 MR. HAYWOODE: I am going to

21 show you a communication which

22 was Exhibit 1 from the last

23 deposition sequence. Let's just

24 refer to it as Exhibit 1 from the

25 last one and I'll --

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1 Dawley 91

2 MR. TRAUB: Let's mark it,

3 because I want to keep all the

4 Exhibits in order. Plaintiff's 3

5 will be Exhibit 1 from the

6 deposition of February 3rd.

7 (A communication from

8 Cameron, Pryce & Griffiths

9 to Dalton was marked as

10 Plaintiff's Exhibit 3, for

11 identification, as of this

12 date.)

13 **Q** I show you this communication and

14 I ask you if you recognize it or remember what

15 it was?

16 **A** **I know what it says, but I don't**

17 **remember it.**

18 **Q** You don't remember receiving it?

19 **A** **No.**

20 **Q** Just paraphrasing, what if

21 anything are they asking for there?

22 **A** **This is a communication from**

23 **Cameron Pryce and Griffiths to Dalton, c/o**

24 **Neale B. Seavey.**

25 **Q** Care of Neale Seavey?

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1 Dawley 92

2 **A** **Yes.**

3 **Q** Did it come to your attention?

4 **A** **I don't recall.**

5 **Q** Looking at the questions were

6 these questions that you were able to respond

7 to?

8 **A** **Some I think I could probably**

9 **find. Some I wouldn't be able to.**

10 **Q** Which one, as you look at it now,

11 would you not be able to find? Just refer to

12 the number.

13 **A** **Well, I think Number 1 one we have**

14 **journal entries.**

15 **Q** I am sorry, 1 asked for what?

16 **A** **Journal entries.**

17 **Q** That you could respond to?

18 **A** **I had journal entries. Yeah, I**

19 **had the basis for it. Deferred income, I**

20 **don't know what that even means. I don't**

21 **recall any deferred income so I couldn't tell.**

22 **The mortgages I wouldn't have the loan**

23 **payable, which is Number 3 and 4. The**

24 **accounts payable detail that's where the books**

25 **go from cash to accrual. That would have been**

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1 Dawley 93

2 a Marks, Paneth adjustment. Number 6 accrued

3 expenses, again cash to accrual. Number 7

4 accumulated amortization. I wouldn't have

5 made that determination and number 8 allowance

6 for doubtful accounts I wouldn't have that

7 information.

8 Q Let me ask you, sir, with regard

9 to which of these numbers would you say you

10 wouldn't have made that examination, what

11 number was that?

12 A Well, Number 3 you asked for

13 mortgages and I wouldn't have -- I wouldn't

14 have the loan mortgages. Number 4 is loan

15 payable. I don't know which loan payable that

16 is. If it's a mortgage loan payable I

17 wouldn't have that.

18 Q It was as to the latter three that

19 you said?

20 A Five and six are where you'd adjust

21 the books from cash to accrual.

22 Q You said you would not have had

23 that information?

24 A We have all the information that

25 would support and it would be given to the

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1 Dawley 94

2 accountant in order to make that entry to put

3 that accrual on the books. In order to put

4 accounts payable on the books at the end of

5 the year, which is a cash to accrual

6 adjustment, they have to get all the

7 information from us because they don't know

8 what's there. So our accounts payable person

9 gets all the information together to support

10 what that accounts payable and accrued expense

11 payable is. It comes from us. It's not

12 something that is made up.

13 Q Well, were you able to respond to

14 questions six, seven and eight in Exhibit 3,

15 which is Exhibit 1 from the first deposition?

16 A Six, seven and eight those were

17 again the items that were on the accrual basis

18 that would have been in the work papers for

19 Marks, Paneth & Shron.

20 Q Now, who is responsible for this

21 financial statement, is it Marks, Paneth &

22 Shron or is it Dalton?

23 MR. KELLY: Objection to the

24 form.

25 MR. TRAUB: Objection to the

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1 Dawley 95

2 form.

3 If you understand the

4 question you can answer.

5 A The audit is done by Marks,

6 Paneth & Shron. They produce the financial --

7 the audit financial statement. We provide

8 them with the beginning trial balance on a

9 cash basis. It gets converted to accrual and

10 it's produced.

11 Q In this conversion to accrual by

12 Marks, Paneth & Shron numbers are changed, is

13 that correct?

14 A Yes.

15 Q They are changed by virtue of

16 depreciation, amortization, things like that?

17 A Yes.

18 Q Right?

19 A Right.

20 Q The information is conveyed back

21 to you after this is done, is that correct?

22 A Yes.

23 Q You have to either approve of this

24 or disapprove of it, is that correct?

25 A Yes.

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1 Dawley 96

2 Q There is no documentation that you

3 know of, in which you have approved of the

4 changes that have been made, is that correct?

5 MR. TRAUB: When you say

6 you, are you talking about Mr.

7 Dawley himself?

8 Q That Dalton approves that the

9 changes have been made, none that you know of,

10 correct?

11 A I didn't approve anything in

12 writing.

13 Q You're the chief executive officer

14 of Dalton?

15 A I am the chief operating officer.

16 Q Is that correct?

17 A Right.

18 Q You just said a few minutes ago on

19 the record, unless I'm not correct, that it's

20 sent to the accountant for the financial

21 statement, was that your testimony?

22 MR. TRAUB: Objection to the

23 form.

24 MR. KELLY: I am going to

25 object too. I don't know what

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1	Dawley	97	1	Dawley	99
2	you're referring to.		2	Q I don't know, I am not an	
3	MR. HAYWOODE: The witness		3	accountant, but have you ever heard of Gagas?	
4	just testified that this		4	A No.	
	information is sent to the		5	Q G-A-G-A-S?	
	accountant for finalization.		6	A No.	
7	Q Was that your testimony?		7	Gapp.	
8	A We have to produce the information		8	Q Or Gapp?	
9	and send it to them, so they have a basis to		9	A Gapp I have heard of.	
10	approve for Marks, Paneth & Shron to do an		10	Q Yes.	
11	audit and produce a financial statement and a		11	A It's been a long time.	
12	tax return.		12	Q Well, I don't know, they make the	
13	Q So that it is Marks, Paneth &		13	lawyers take refresher courses.	
14	Shron which is acting as an accountant here,		14	A I haven't taken one in thirty	
15	is that correct?		15	years.	
16	MR. TRAUB: Objection to the		16	Q What are those regulations roughly	
17	form.		17	if you know, anything about them say anything	
18	MR. KELLY: Objection to the		18	about the auditing or accounting process?	
19	form.		19	A I couldn't tell you.	
20	A I don't believe so.		20	Q Do they say anything about the	
21	Q Well, when you refer to Marks,		21	separation of the auditing process from the	
22	Paneth & Shron as the accountant, sir, why do		22	accounting process?	
23	you do that?		23	A I have no idea, 'cause I have not	
24	MR. TRAUB: Objection to the		24	looked at any of those forms you're talking	
25	form.		25	about. A lot of it probably is new stuff and	
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	800-608-6085			800-608-6085	
1	Dawley	98	1	Dawley	100
2	A Let's see, how do I answer this?		2	I haven't even looked at anything. That's not	
3	MR. TRAUB: Truthfully,		3	my function.	
4	please.		4	Q You're from the old school?	
5	THE WITNESS: I am.		5	A Really old.	
6	MR. HAYWOODE: I heard		6	Q Can I as an accountant both do the	
7	counsel say truthfully please. I		7	accounting work and keep the accounting	
8	appreciate the sentiment. I know		8	materials and also be the auditor to your	
9	it's difficult to exist.		9	understanding of the operation?	
10	A Everything has been fruitful.		10	A I couldn't do all the accounting	
11	MR. HAYWOODE: The lawyers		11	for Dalton and at the end of the year do an	
12	must stop and the witness must		12	audit and sign off on it, no.	
13	speak.		13	MR. TRAUB: Off the record.	
14	Q Please, sir, I am sorry.		14	(Whereupon, a discussion was	
15	A We refer to all accounting firms		15	held off the record.)	
16	-- you refer to them as accounting firm not		16	(Whereupon, the requested	
17	audit firms.		17	portion was read back by the	
18	Q When you discuss the national		18	reporter.)	
19	firms, you refer to them as accounting firm		19	Q Is it fair to say, sir, that you	
20	not an audit firm?		20	didn't do all the accounting for Dalton with	
21	A So that is just a phrase.		21	regard to these four buildings?	
22	Q Is there some distinction between		22	A We did all the accounting.	
23	the accounting process and the auditing		23	Q Well, what if anything was Marks,	
24	process?		24	Paneth & Shron doing when they suggested to	
25	A Yes, it's different.		25	you, let's see, sixty-one journal entries	
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